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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,927	09/26/2003	Holger Riemer	11150/77	8298
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KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			EXAMINER LARSON, JUSTIN MATTHEW	
			ART UNIT 3782	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/671,927

Applicant(s)

RIEMER ET AL.

Examiner

Justin M. Larson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12 and 13 is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6 and 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jozefczak et al. (US 5,186,371) in view of LeDuc et al. (US 6,701,913) and Farmer (US 6,712,171), further in view of Grief (US 6,676,186 B2).

Regarding claims 1, 2, 17, and 18, Jozefczak et al. discloses a spare-wheel carrier (12) for a motor vehicle, the spare-wheel carrier pivotable at a body of the motor vehicle and arranged in a region of a tailgate of the motor vehicle. Jozefczak et al. fails to teach a sensor that alerts the vehicle operator when the spare-wheel carrier is in a predetermined open position at which point tailgate functions of the motor vehicle are blocked until the spare-wheel carrier is placed in the proper closed position.

LeDuc et al., however, also discloses a pivotable carrier (100) arranged in a region of a tailgate of a motor vehicle and teaches that a sensor may be implemented on the carrier to alert the vehicle operator via a display unit when the carrier is in a predetermined open position (col. 10 lines 33-43). While the specific structure of the sensor is not disclosed, it becomes apparent to one having ordinary skill in the art that the sensor serves to reduce the chance that the vehicle operator might drive the vehicle while the carrier is open and susceptible to swinging freely from the rear of the vehicle.

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Similarly, Farmer discloses a sensor comprising a touch-sensitive switch (14) that detects when a fuel door is in a predetermined open position and sends a signal to a controller that then prevents the engine of the vehicle from starting. The sensor serves to prevent a user from fueling there car while the car is running and also to inform the user via a display unit that the fuel door is open and prevents the user from driving away after forgetting to close the fuel door (col. 2 line 64 – col. 3 line 1). Finally, Greif discloses a tailgate having a sensor to detect whether or not an object is in the movement path of the tailgate, where the sensor, upon detecting an object in the tailgate's movement path, disables functions of the tailgate such as its ability to open. This prevents the tailgate from being damaged by any object in its movement path (col. 1 lines 40-51). All of these references are concerned with using a sensor to avoid undesirable situations for the operator of a vehicle.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to implement a position sensor on the carrier of Jozefczak, as taught by LeDuc et al., and to form that sensor with a touch-sensitive switch and provide that sensor with blocking functions, as motivated by Farmer, in the form of tailgate blocking functions, as taught by Greif, in order to alert a user when the carrier is in an unlocked position and also to prevent the tailgate from being opened such that it collides with the carrier and is damaged.

Regarding claim 3, because Applicant has not traversed Examiner's assertion of Official Notice, the fact that it is well known to include such display units or indicators

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along the dashboard, effectively an instrument cluster, so that the display unit or indicator is visibly accessible to the vehicle operator is taken to be admitted prior art.

Regarding claim 4, the spare-wheel carrier of Jozefczak et al. is lockable via a latching mechanism (22).

Regarding claim 5, the sensor of the modified Jozefczak et al. device includes a touch-sensitive switch as set forth above and can be considered to include a lock (the latch mechanism 22), wherein the lock is configured to retain the closed position of the spare-wheel carrier.

Regarding claim 6, the modified Jozefczak et al. device includes an actuator (50, Jozefczak et al.) assigned to the lock (22, Jozefczak et al.), the actuator operable in accordance with a grip switch (46, Jozefczak et al.).

Regarding claim 14, the modified Jozefczak et al. device includes several bearings (42,44, Jozefczak et al.). It would have been obvious to one having ordinary skill in the art at the time the invention was made to implement the touch-sensitive switch, or end switch, as taught by Farmer, on either of the bearings of the Jozefczak et al. device, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70. The touch-sensitive switch can be installed at any location on the carrier so long as that location permits the switch to effectively detect a predetermined open position of the carrier.

Regarding claim 15, the modified Jozefczak et al. device includes a tailgate that is operable in the presence of a touch-sensitive end switch after the position of the spare-wheel carrier has been signaled to a user. Regarding the tailgate grip switch,

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while Jozefczak et al. do not specifically disclose a grip switch, Examiner is of the position that the tailgate inherently has a grip switch. With no such switch, the tailgate could not be opened.

Regarding claim 16, the modified Jozefczak et al. device includes the claimed features except for an arrangement configured to block operation of a rear window in accordance with a locking of the spare-wheel carrier. Official Notice is taken to the fact that it is old and well known for the rear window of a vehicle tailgate to have a latch/lock arrangement that allows a user to open the window independent of the entire tailgate. It would therefore have been obvious to one having ordinary skill in the art at the time the invention was made to include a latch/lock on the tailgate window of Jozefczak et al. so that the window could be opened independent of the entire tailgate. Such a latch/lock arrangement would block operation of the window in accordance with, or when, the spare-wheel carrier was locked, effectively satisfying the limitations of the claim.

Regarding claim 19, the method steps are satisfied during the normal operation and use of the modified Jozefczak et al. device set forth above.

3. Claims 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied in paragraph 6 above in view of Gelula (4,597,354) and Gelula (4,803,760).

Regarding claims 7 and 9, the modified Jozefczak et al. device as set forth above has a latch assembly including a striker attached to the body of the vehicle and complementary locking element attached to the spare-wheel carrier, but the striker does not have a ball and pin, the complementary locking element does not include two

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swivelable ball sockets, and there is no blocking member to control the position of the ball sockets.

Gelula '354, however, discloses another latching assembly including a striker having a ball (34) and pin (32), a complementary locking element including two swivelable ball sockets (38), and a blocking member (64), where the blocking member is operable by a key (90). Similarly, Gelula '760 discloses a latching assembly including a striker (12), a complementary locking element including two swivelable sockets (26), and a blocking member (52), where the blocking member is operable by tongue (52).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the latch assembly of the modified Jozefczak et al. device with a latch assembly like that taught by Gelula '354, since both are art-equivalent latch assemblies, and to then replace the blocking member as taught by Gelula '354 with a blocking member like that taught by Gelula '760, since both are art-equivalent blocking members. By replacing the key-actuated blocking member with the tongue-actuated blocking member, one of ordinary skill would be able to implement the latch assembly to the modified Jozefczak et al. device such that operation of the original grip switch (46, Jozefczak et al.) would act on the tongue to release the latch.

Regarding claim 8, the striker ball (34, Gelula '354) of the modified Jozefczak et al. device is considered to support the striker to the same degree that Applicant has shown.

Regarding claim 10, the latch mechanism of Gelula '354 that has been implemented on the modified Jozefczak et al. device includes two catch hooks (58) that

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are configured to hold the ball sockets in a closed position in accordance with their weight.

Regarding claim 11, the locking element of modified Jozefczak et al. device includes at least one lever (46, Jozefczak et al.) arranged as a release mechanism.

Allowable Subject Matter

4. Claims 12 and 13 are allowable over the art of record.

Response to Arguments

5. Applicant's arguments filed 3/8/07 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JML
11/26/07


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER